

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ERIC ZACHARY ANDERSON,  
Plaintiff,  
v.  
M. SOKOLOFF, et al.,  
Defendants.

Case No. [15-cv-01854-YGR](#) (PR)

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

**INTRODUCTION**

Plaintiff Eric Zachary Anderson, a state prisoner currently incarcerated at Pelican Bay State Prison (“PBSP”), filed a *pro se* civil rights complaint under 42 U.S.C. § 1983 concerning Defendants’ responses to his medical needs on a “lay over” at San Quentin State Prison (“SQSP”) during his transfer to PBSP in November of 2013. His complaint is now before the Court for review pursuant to 28 U.S.C. § 1915A.

Plaintiff names the following Defendants at SQSP: Registered Nurse M. Sokoloff; Physicians E. Tootell and Lisa Pratt; and Medical Hiring Authority Andrew Deems. Plaintiff seeks monetary damages “due to SQSP medical negligence.” Dkt. 1 at 4.

Plaintiff has been granted leave to proceed *in forma pauperis*.

Venue is proper because the events giving rise to the claim are alleged to have occurred at SQSP, which is located in this judicial district. *See* 28 U.S.C. § 1391(b).

For the reasons outlined below, the complaint is DISMISSED WITH LEAVE TO AMEND.

**DISCUSSION**

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28

1 U.S.C. § 1915A(a). The court must identify any cognizable claims, and dismiss any claims which  
 2 are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary  
 3 relief from a defendant who is immune from such relief. *See* 28 U.S.C. §1915A(b)(1), (2). *Pro se*  
 4 pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d  
 5 696, 699 (9th Cir. 1988).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a  
 7 right secured by the Constitution or laws of the United States was violated and (2) that the  
 8 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487  
 9 U.S. 42, 48 (1988).

10 In his complaint, Plaintiff asserts that on November 11, 2013, he was “stabbed 15 times by  
 11 two inmates with two knives” at California State Prison – Sacramento (“C.S.P. SAC”). Dkt. 1 at  
 12 3. Plaintiff claims that “within 15 hours” he was transferred out of C.S.P. SAC, and taken to  
 13 SQSP for a “layover” on his way to PBSP. *Id.* Plaintiff claims that he was “in terrible pain” and  
 14 that “[his] stab [sic] wounds were bloody & throbbing . . . .” *Id.* Plaintiff requested “medical  
 15 attention and to be given [his] pain meds prescribed by [the] C.S.P. SAC M.D. who stitched [him]  
 16 up.” *Id.* However, Defendant Sokoloff “refused to examin[e] [his] wounds that were bleeding”  
 17 and “refused to issue [him his] pain medication.” *Id.* Plaintiff adds that Defendant Sokoloff  
 18 “falsified [his] body chart by saying [he] had NO WOUNDS.” *Id.* Plaintiff states that Defendant  
 19 Sokoloff “wrote ‘T3’ on the top of [Plaintiff’s] body chart as that was the prescribed med[icine]  
 20 [he] was sup[p]osed to receive that [he] kept pleading with her to give [him].” *Id.* Plaintiff claims  
 21 that he “was forced to endure [his] pain all night on [his] lay over at SQSP with no medical  
 22 treatment” and that the next day, he was still denied his medication and “forced in a prison bus and  
 23 [driven] 9 hours to [PBSP] . . . .” *Id.* On November 14, 2013, Plaintiff states that he was finally  
 24 given his medication at PBSP. *Id.*

25 To prove that the response of prison officials to an inmate’s medical needs was  
 26 constitutionally deficient, the inmate must establish (1) a serious medical need and (2) deliberate  
 27 indifference to that need by jail officials. *See McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th  
 28 Cir. 1992), *overruled on other grounds*, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136

1 (9th Cir. 1997) (en banc). A prison official is deliberately indifferent if he knows that a prisoner  
2 faces a substantial risk of serious harm and disregards that risk by failing to take reasonable  
3 measures to abate it. *See Farmer v. Brennan*, 511 U.S. 825, 837, 844 (1994).

4 Here, as explained below, the complaint fails to state a claim upon which relief may be  
5 granted against any Defendant. Plaintiff must file an amended complaint to cure the deficiencies  
6 discussed in this Order.

7 First, the complaint does not include any allegation that suggests deliberate indifference to  
8 a serious medical need. At most, Plaintiff's claim—that Defendant Sokoloff failed to examine  
9 him or provide him with his medication during his over-night lay over at SQSP—amounts to  
10 negligence. In fact, as mentioned above, in the "Relief" section of his complaint, Plaintiff  
11 concedes that his claim is one of "medical negligence." Dkt. 1 at 4. It is well-established law that  
12 a claim of medical malpractice or negligence is insufficient to make out a violation of the Eighth  
13 Amendment. *See Toguchi v. Chung*, 391 F.3d 1051, 1060-61 (9th Cir. 2004); *see, e.g., Frost v.*  
14 *Agnos*, 152 F.3d 1124, 1130 (9th Cir. 1998) (finding no merit in claims stemming from alleged  
15 delays in administering pain medication, treating broken nose and providing replacement crutch,  
16 because claims did not amount to more than negligence).

17 To state a claim arising under federal law, it must be clear from the face of Plaintiff's well-  
18 pleaded complaint that there is a federal question. *See Easton v. Crossland Mortgage Corp.*, 114  
19 F.3d 979, 982 (9th Cir. 1997). Here, it is not clear that Plaintiff presents a federal question.  
20 However, liberally construing Plaintiff's complaint as this Court is required to do, *see Hughes v.*  
21 *Rowe*, 449 U.S. 5, 9 (1980), Plaintiff's claims could potentially state an Eighth Amendment  
22 violation if Plaintiff can sufficiently plead his allegations. As mentioned above, a determination  
23 of "deliberate indifference" involves an examination of two elements: the seriousness of the  
24 prisoner's medical need and the nature of the defendant's response to that need. *See McGuckin*,  
25 974 F.2d at 1059. At this time, Plaintiff's current claim of negligence is insufficient to amount to  
26 an Eighth Amendment violation. *See Toguchi*, 391 F.3d at 1060-61.

27 Second, Plaintiff has not provided the Court with the sufficient information necessary to  
28 determine whether an Eighth Amendment claim for relief has been stated against *any* Defendant.

1 A complaint that fails to state the specific acts of the defendant which violated the plaintiff's rights  
2 fails to meet the requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure. *Hutchinson*  
3 *v. United States*, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982).

4 Plaintiff claims that Defendant Sokoloff refused to examine Plaintiff's injuries while he  
5 was at SQSP for an over-night lay over. Dkt. 1 at 3. Plaintiff adds that Defendant Sokoloff  
6 falsely indicated that he had "NO WOUNDS." *Id.* However, Plaintiff claims that Defendant  
7 Sokoloff did correctly indicate that Plaintiff was prescribed "T3" as pain medication on his "body  
8 chart," but that Defendant Sokoloff failed to provide him with his medication. *Id.* Even so, again,  
9 such a claim of an isolated incident of failing to examine Plaintiff and denying him medication  
10 amounts at most to negligence, which does not violate a prisoner's Eighth Amendment rights.  
11 *Toguchi*, 391 F.3d at 1060-61; *Frost*, 152 F.3d at 1130. And, as explained above, Plaintiff  
12 concedes that Defendant Sokoloff's actions amounted to "medical negligence." Dkt. 1 at 4.  
13 Moreover, Plaintiff claims that he was eventually given his pain medication when he arrived at  
14 PBSP on November 14, 2013. *Id.* at 3.

15 Plaintiff must allege facts sufficient to show that the remaining named Defendants' actions  
16 rise to the level of constitutional violations. As mentioned above, Plaintiff is attempting to also  
17 hold Defendants Tootell, Pratt and Deems liable for the claims in his complaint; therefore, he must  
18 allege facts showing what each defendant did that violated his constitutional rights. *See Leer v.*  
19 *Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) (sweeping conclusory allegations will not suffice; the  
20 plaintiff must instead set forth specific facts as to each individual defendant's actions which  
21 violated his or her rights). This Plaintiff has not done. He fails to mention any of these remaining  
22 named Defendants in the "Statement of Claim" section of his complaint. Dkt. 1 at 3. In addition,  
23 if Plaintiff claims that any of the remaining named Defendants are liable as supervisors, he must  
24 allege that these Defendants "participated in or directed the violations, or knew of the violations  
25 and failed to act to prevent them." *Taylor*, 880 F.2d at 1045. Because Plaintiff has not linked any  
26 of the remaining named Defendants to his claims, no claim for damages can proceed unless  
27 Plaintiff amends his complaint to cure this pleading deficiency.

28 "While a complaint . . . does not need detailed factual allegations, . . . a plaintiff's

1 obligation to provide the ‘grounds of his ‘entitle[ment] to relief’ requires more than labels and  
2 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .  
3 Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell*  
4 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 553-56, (2007) (citations omitted). A complaint should  
5 be dismissed if it does not proffer “enough facts to state a claim for relief that is plausible on its  
6 face.” *Id.* at 570. However, district courts must afford *pro se* prisoner litigants an opportunity to  
7 amend to correct any deficiency in their complaints. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th  
8 Cir. 2000) (en banc).

9 As explained above, Plaintiff has not stated a cognizable deliberate indifference claim  
10 against any of the named Defendants. Plaintiff will be granted leave to amend to correct the  
11 aforementioned deficiencies, if he can do so in good faith. In his amended complaint, Plaintiff  
12 must establish legal liability of each person for the claimed violation of his rights. Plaintiff must  
13 write out a complete statement of his claim. The Court notes that Plaintiff has attached several  
14 medical records and grievances to his complaint apparently as a way to explain his problem.  
15 However, the Court will not read through exhibits to piece together a claim for a Plaintiff who has  
16 not pled one. It is Plaintiff’s obligation to write out a complete statement of his claim in his  
17 amended complaint.

18 The Court reminds Plaintiff that liability may be imposed on an individual defendant under  
19 section 1983 if the plaintiff can show that the defendant proximately caused the deprivation of a  
20 federally protected right. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v. City of*  
21 *Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a constitutional  
22 right within the meaning of section 1983 if he does an affirmative act, participates in another’s  
23 affirmative act or omits to perform an act which he is legally required to do, that causes the  
24 deprivation of which the plaintiff complains. *See Leer*, 844 F.2d at 633; *see, e.g., Robins v.*  
25 *Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995) (prison official’s failure to intervene to prevent  
26 Eighth Amendment violation may be basis for liability). Sweeping conclusory allegations will not  
27 suffice; Plaintiff must instead “set forth specific facts as to each individual defendant’s”  
28 deprivation of protected rights. *Leer*, 844 F.2d at 634.

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1 informed of any change of address and must comply with the Court's orders in a timely fashion.  
2 Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se* whose address changes  
3 while an action is pending must promptly file a notice of change of address specifying the new  
4 address. *See* L.R. 3-11(a). The Court may dismiss without prejudice a complaint when: (1) mail  
5 directed to the *pro se* party by the Court has been returned to the Court as not deliverable, and  
6 (2) the Court fails to receive within sixty days of this return a written communication from the *pro*  
7 *se* party indicating a current address. *See* L.R. 3-11(b).

8 IT IS SO ORDERED.

9 Dated: October 6, 2015

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11 YVONNE GONZALEZ ROGERS  
12 United States District Judge  
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